

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOHN RAPILLO and HEIDI RAPILLO,

Plaintiffs,

-against-

BARRY FINGERHUT, DAVID HOLZER,  
FINGERHUT-HOLZER PARTNERS LLC,  
FINGERHUT-HOLZER EQUITIES, INC.,  
FINGERHUT-HOLZER, INC., FINGERHUT-  
HOLZER FUND L.P., GEO-CAPITAL PARTNERS,  
INC., FINGERHUT-HOLZER THE WAVERLY I,  
LLC., FINGERHUT-HOLZER THE WAVERLY II,  
LLC., LESLIE HOLZER, DOUGLAS HOLZER,  
JENNIFER HOLZER, JOSHUA HOLZER and  
JOSEPH HOLZER,

Defendants.

Index No. 09-CIV-10429  
(VSB)

**DECLARATION OF MAX  
FOLKENFLIK IN  
OPPOSITION TO  
PLAINTIFFS' RULE 60  
MOTION**

Max Folkenflik Declares the following to be true under penalties of perjury:

1. I am a member of Folkenflik & McGerity LLP, counsel for Defendants Barry Fingerhut ("Fingerhut") and for Defendants Fingerhut-Holzer Partners LLC, Fingerhut-Holzer Equities, Inc., Fingerhut-Holzer, Inc., Fingerhut-Holzer Fund, L.P., Geo-Capital Partners, Inc., Fingerhut-Holzer The Waverly I, LLC, Fingerhut-Holzer The Waverly II, LLC, (collectively the "Entity Defendants"). While I am

not clear on the legal relevance of Plaintiffs' conflict claim, contrary to the false claim in Plaintiffs moving papers, I have never been counsel for David Holzer or any of the other individual Holzer Defendants

2. Due to an error, the docket incorrectly reflects that I appeared for all individual defendants named Holzer. I am informed that when I applied for an extension of my clients' time to file a reply with respect to my clients' Motion to Dismiss (Dkt. No. 59), although my letter application reflects my appearance as counsel for Fingerhut and the Defendants only, in making the ECF filing the boxes were inadvertently "checked" for each Defendant. The ECF protocol is to treat that filing as making an "appearance" for each of the Defendants indicated by a checked box.

3. I have never been retained by any of the individual Holzer Defendants. Leslie Holzer appeared pro se and filed an answer, but the claims against her were dismissed. The other individual Defendants, Douglas, Jenifer, Joshua, and Joseph, never appeared. But, the claims against them were dismissed. Defendant David Holzer answered the complaint, but never answered the amended complaint, and (to the extent that he appeared) he appeared pro se.

4. Annexed hereto as Exhibit A is David Holzer's Allocution. Annexed hereto as Exhibit B is this Court's prior Order dismissing the claims against Fingerhut and the Entity Defendants. Annexed hereto as Exhibit C is the Order of the Second Circuit dismissing Plaintiffs' appeal of this Court's prior Order. Annexed hereto as Exhibit D is Plaintiffs' Memorandum of Law submitted on the Motion to Dismiss.

Dated: New York, New York  
July 27, 2019

  
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Max Folkenflik